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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/671,783	09/27/2000	JEAN-PIERRE LARDY		6965

7590 05/18/2004

CHRIS L HOLM  
MILBANK TWEED HADLEY & MCCLOY LLP  
1 CHASE MANHATTAN PLAZA  
NEW YORK, NY 10005-1413

EXAMINER

GORT, ELAINE L

ART UNIT PAPER NUMBER

3627

\*DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/671,783

**Applicant(s)**

LARDY ET AL.

**Examiner**

Elaine Gort

**Art Unit**

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 24-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 24-27 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-23, 28 and 29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Current office policy regarding method claims disclosed as requiring a computer but not claiming the use of a computer is to consider the claimed subject matter as non-statutory for failing to fall within the technological arts. Claims must be tied to a technological art. One way to overcome this rejection is to tying the method to a computer.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-23, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irving et al. (US Patent 5,991,743) in view of Kealhofer (US Patent 6,078,903).

Irving et al. discloses the claimed device but is silent regarding the default rating being in the form of a probability of default. Kealhofer discloses that it is known in the art to provide a probability of default to provide individuals with quantitative information to predict successful payment and the expected default rate (column 3, lines 53+). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for determining a company's default rating of Irving et al. with the probability format of Kealhofer, in order to provide the rating in a numeric probability format.

Irving et al. discloses a method for determining a company's likelihood of no default utilizing an equation "substantially" in the form as claimed (Examiner broadly construes the word substantially to mean "relating to" as found in the Merriam Webster's Collegiate Dictionary 10<sup>th</sup> Edition, 1996) including:

determining a factor reflecting both price and price volatility of shares in the company (system tracks share price over time, column 2, line 56; column 1, line 43+ and column 2, lines 40+ discuss proactive monitoring over time),

debt per share (system tracks balance sheet figures which inherently include debt per share including both long and short term debt, column 7 line 5),

and expected debt recovery fraction and deviation of the expected debt recovery (system tracks historical risk ratings including predetermined risk categories which incorporate expected debt recovery, column 3, line 29);

and determines the company's rating for default based on the above factors (such as when the system creates a report including a risk rating).

Regarding the calculation of the standard deviation of price, debt per share, and expected debt recovery, it is notoriously old and well known in the art of probability forecasting to use the standard deviation which indicates the way in which a probability function is centered around its mean, to indicates a measure of dispersion and variability and it would have been obvious to utilize the variation of price and expected debt recovery to indicate the stability of these factors that directly relate or indicate the company's strength.

### ***Response to Arguments***

6. Applicant's arguments filed 2/27/04 have been fully considered but they are not persuasive.

Applicant has overcome the 101 rejection regarding performance of a concrete, useful or tangible result, but has not overcome the 101 technological art requirement rejection.

Applicant has argued that Irving does not disclose using stock prices in determining risk exposure. Examiner contends that Irving does disclose the use of stock prices in column 2 line 56+ while it also discusses in column 1 lines 46+ that risk

factors include financial health which among other factors can be indicated by share price and volatility of share price.

Applicant has argued that Irving does not disclose using "debt recovery fraction" in determining risk exposure. Examiner contends that Irving does disclose the use of "debt recovery fractions" when the system tracks historical risk ratings including predetermined risk categories as predetermined risk inherently incorporates what amount of debt is expected to be recovered. This is discussed in column 3, line 29.

Applicant has argued that Irving does not teach volatility of share price. Examiner took official notice that it is old and well known in the art of financial forecasting to use standard deviations for financial factors to indicate variability of the factors which directly related to or indicate a company's strength. For example if there is high volatility in share price this could indicate instability which can be construed to indicate higher risk. High volatility of expected debt recovery and debt would also indicate instability which also can be construed to indicate higher risk.

Applicant has further argued that the combination of Irving and Kealhofer do not teach using equations in "substantially" the forms as provided in the claim. Examiner contends that the usage of the term "substantially" broadens the claim as this term can be interpreted to mean "relating to" (as found in the Merriam Webster's Collegiate Dictionary 10<sup>th</sup> Edition, 1996) and thus the analysis and calculations performed by Irving et al., which are not disclosed in detail, incorporate factors which "relate to" those in the claimed equation and thus the combination of Irving and Kealhofer disclose the use of

equations "substantially" in the form as claimed. See also column 4, lines 15+ which discusses formulas.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone

Art Unit: 3627

number for the organization where this application or processing is assigned is  
(703)872-9327.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is (703)308-  
1113.

EG



May 17, 2004



ROBERT P. OLSZEWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600